Filed 7/21/20 P. v. Perez CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. STEVEN BOGLE PEREZ, Defendant and Appellant.	B296859 Los Angeles County Super. Ct. No. BA471053

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Reversed and remanded with directions.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Steven D. Matthews and Heidi Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Steven Bogle Perez was sitting alone in Carl's Jr. one evening, eating a hamburger, when two LAPD officers walked in and ordered him to step outside. The officers handcuffed Perez and made him face the wall. A subsequent warrantless search revealed Perez was carrying a loaded handgun. Perez argues the trial court should have granted his motion to suppress the fruits of the warrantless search because the prosecution did not prove the officers knew, before detaining him, that he was on juvenile probation and subject to search and seizure conditions. Without that knowledge, he contends, the detention was unlawful and the subsequently-discovered evidence was inadmissible. We agree. We therefore reverse and remand with directions.

BACKGROUND

On September 2, 2018, at 5:30 p.m., Perez was sitting alone in Carl's Jr., eating a hamburger. At the time, he was 18 years old. LAPD Officers Aldo Quintero and Daniel Guevara entered the restaurant, recognized Perez, and ordered him to accompany them outside. Once outside, they made Perez face the wall, and they cuffed his hands behind his back.

At the preliminary hearing, Quintero testified that once Perez was outside and handcuffed, Quintero was about to pat him down, when Perez "spontaneously stated he had a gun in his waistband." Quintero searched him and recovered a loaded, unregistered revolver. Quintero testified that he knew Perez was on probation but did not state whether he believed that probation included search conditions. The preliminary hearing magistrate

denied Perez's motion to suppress the fruits of the search and held him to answer on two counts.

By information dated February 15, 2019, Perez was charged with one count of having a concealed firearm on the person (Pen. Code,[1] § 25400, subd. (a)(2); count 1) and one count of carrying an unloaded, unregistered handgun (§ 25850, subd. (a); count 2). Perez pled not guilty.

Shortly thereafter, Perez moved to set aside the information (§ 995, subd. (a)(2)(B)) and again moved to suppress the firearm and ammunition (§ 1358.5, subd. (i)). At a subsequent hearing on the motion before a different bench officer, Quintero testified again.

This time, Quintero testified that once Perez was handcuffed, Quintero's partner asked Perez "if he had anything on him … ." Perez said he had a gun. Quintero then ran Perez through a law enforcement database and saw he was on probation with search conditions.[2] Only then did he search Perez and recover the handgun.

The court denied the motion to suppress.

Perez pled no contest to count 1, carrying a concealed firearm (§ 25400, subd. (a)(2)) under *People v. West* (1970) 3 Cal.3d 595. The court sentenced him to the low term of 16 months in county jail and dismissed count 2.

Perez filed a timely notice of appeal.

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[1] Undesignated statutory references are to the Penal Code.

[2] At the time of the detention, Perez was on juvenile probation.

DISCUSSION

Perez contends his motion to suppress should have been granted because the prosecution did not establish the officers knew, when they detained him, that his juvenile probation included a search condition. We agree.

1. Legal Principles and Standard of Review

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (U.S. Const., 4th Amend.)

"A seizure of the person occurs ' "whenever a police officer 'by means of physical force or show of authority' restrains the liberty of a person to walk away." ' [Citations.] There are two different bases for detaining an individual short of having probable cause to arrest: (1) reasonable suspicion to believe the individual is involved in criminal activity [citation] and (2) advance knowledge that the individual is on searchable probation or parole [citations]." (*People v. Douglas* (2015) 240 Cal.App.4th 855, 859–860.) Perez contends neither standard was met in this case, and since the gun and ammunition were found as a result of the unlawful initial detention, they should have been suppressed.

"When a defendant raises a challenge to the legality of a warrantless search or seizure, the People are obligated to produce proof sufficient to show, by a preponderance of the evidence, that the search fell within one of the recognized exceptions to the

warrant requirement. [Citations.] A probation search is one of those exceptions. [Citations.] This is because a 'probationer ... consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term,' except insofar as a search might be 'undertaken for harassment or ... for arbitrary or capricious reasons.' [Citations.]

"Because the terms of probation define the allowable scope of the search [citation], a searching officer must have 'advance knowledge of the search condition' before conducting a search [citations]. Without such advance knowledge, the search cannot be justified as a proper probation search, for the officer does not act pursuant to the search condition. [Citations.]" (*People v. Romeo* (2015) 240 Cal.App.4th 931, 939–940 (*Romeo*).)

" 'Section 1538.5, by its terms, authorizes a motion to suppress if "[t]he search or seizure without a warrant was unreasonable." ' (*People v. Williams* (1999) 20 Cal.4th 119, 129.) This requires that the 'defendant[ ] must do more than merely assert that the search or seizure was without a warrant. The search or seizure must also be unreasonable; that is, it must not fall within any exception to the warrant requirement.' (*Ibid.*) A three-step allocation of the burden of producing evidence governs, with the ultimate burden of persuasion always remaining on the People. '[W]hen defendants move to suppress evidence, they must set forth the factual and legal bases for the motion, but they satisfy that obligation, at least in the first instance, by making a prima facie showing that the police acted without a warrant. The prosecution then has the burden of proving some justification for the warrantless search or seizure, after which, defendants can respond by pointing out any inadequacies in that justification.' (*Id.* at p. 136.) The prosecution retains the ultimate burden of

'proving that the warrantless search or seizure was reasonable under the circumstances.' (*Id*. at p. 130.)" (*Romeo*, *supra*, 240 Cal.App.4th at pp. 940–941.)

Here, the court held the initial detention was reasonable because Quintero knew Perez was on probation and subject to warrantless detention. It held the subsequent search was reasonable because, after Perez was lawfully detained, he revealed he was carrying a handgun, which established probable cause for the search.

The question of whether the officers knew that Perez was on probation and was subject to search conditions is a question of historical fact, and we defer to the court's factual findings if they are supported by substantial evidence. (*Romeo*, *supra*, 240 Cal.App.4th at pp. 941–942, 948–949.) Substantial evidence is evidence that is "reasonable, credible, and of solid value … ." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) To determine whether substantial evidence exists, we review the evidence in the light most favorable to the prosecution and presume in support of the court's ruling the existence of every fact it could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The same standard applies where the ruling rests primarily on circumstantial evidence. (*People v. Thompson* (2010) 49 Cal.4th 79, 113.) We may not reweigh the evidence or resolve evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Deference is not abdication, however, and substantial evidence is not synonymous with *any* evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576–577.) " 'A decision supported by a mere scintilla of evidence need not be affirmed on appeal.' [Citation.] Although substantial evidence may consist of

inferences, those inferences must be products of logic and reason and must be based on the evidence." (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) Similarly, we "may not ... ' "go beyond inference and into the realm of speculation in order to find support for a judgment." ' " (*People v. Franklin* (2016) 248 Cal.App.4th 938, 947; *People v. Waidla* (2000) 22 Cal.4th 690, 735 [speculation is not evidence and cannot support a conviction].)

If the court's factual findings are not supported by substantial evidence or if " 'the undisputed facts establish that the search or seizure was constitutionally unreasonable as a matter of law,' we are not bound by the court's ruling. [Citation.] We independently determine whether the facts found amount to a reasonable search or seizure under the Fourth Amendment. [Citations.]" (*People v. Thomas* (2018) 29 Cal.App.5th 1107, 1113.)

2. Proceedings Below

At the preliminary hearing, Quintero testified that he knew Perez was on probation: "We've had numerous contacts, police contacts with him. So we knew he was on probation and we knew who he was and we met him numerous times." He explained that before seeing Perez at Carl's Jr. that day, "it had been several months" since he had checked Perez's probation status because "we knew he was in custody." But, Quintero knew Perez had been released from custody "recent[ly], within I believe weeks maybe" of seeing him at Carl's Jr. And, he agreed with the prosecutor's suggestion that "within those weeks" he had "run [Perez] to see if he was on probation." Thus, Quintero testified, when he saw Perez at Carl's Jr., he knew Perez was on probation.

The second time Quintero testified, he explained he knew Perez was on probation "through the contact we had with him,

pedestrian stops or his arrest [for failing to report to his probation officer] we made on I believe February—January 28th, 2018, the last time my partner and I arrested him, and through periodic wants and warrants checks." Though Quintero did not know when Perez had been placed on probation, he had "more or less an idea" when Perez's probation was set to expire.

Quintero also testified that, after detaining and handcuffing Perez, but before searching him, he "ran [Perez] on the computer system," which showed that Perez was on probation with search and seizure conditions of his person, property, and residence.

3. The prosecution did not prove the officers knew about the search condition before detaining Perez.

Viewed in the light most favorable to the court's factual findings, over the course of two different hearings, Quintero testified that when he encountered Perez in Carl's Jr., Quintero believed him to be on probation. He regularly ran Perez's name through a database downtown that revealed Perez's probation status and had most recently done so as recently as several weeks before. As such, Quintero had "more or less an idea" of when Perez's probation expired.

The People implicitly concede Quintero did not testify that he knew, *before* detaining Perez, whether Perez's probation included search conditions or the scope of any such conditions. But, they point out, Quintero did testify that when he ran Perez's name *after* detaining him, it showed he was subject to search or seizure of his person, property, and residence. The People assert that it "is reasonable to infer that if the system showed that [Perez] was on probation with a search and seizure condition during the detention, the same information was shown (and

known) on the many times the officer ran his name before the Carl's Jr. contact … ." We disagree.

As discussed, although substantial evidence may be based on inferences, "those inferences must be products of logic and reason and must be based on the evidence. Inferences that are the result of mere speculation or conjecture cannot support a finding." (*In re James R.*, *supra*, 176 Cal.App.4th at p. 135; Evid. Code, § 600, subd. (b) ["An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action."].)

Here, Quintero testified that when he ran Perez's name through a database downtown, several weeks before detaining him, it revealed Perez was on probation. And, when he ran Perez's name through a database during the detention, it revealed Perez was on probation. At that point, Quintero was able to see that Perez was subject to a search and seizure condition and to obtain the text of that condition. Quintero did not identify the database or databases he used for these various searches, however. Nor did he testify that all the databases contained the same information—or, if they did, that the information appeared on the same screen.

To the contrary, the record reveals that while Quintero could learn Perez's probationary status through a wants and warrants check, finding out the *conditions* of Perez's probation required, at minimum, an additional search or a second step. According to Quintero, "our computer system shows his name, date of birth, and probation status and that's it." He explained: "Actually, when we actually run the individual, there's a COP number, and **we input that** and it states his conditions of

probation." (Emphasis added.) "COP" stands for "Conditions of Probation."

Even assuming Quintero used the same database for all of his searches, therefore—a fact to which he did not testify and that we have no evidence to support—there is no evidence that during any of the database searches he conducted before detaining Perez, he took the additional step required to input Perez's COP number and learn his probation conditions. Nor is there any basis in the record to infer as much.

Because the record contains no substantial evidence that Quintero knew Perez's juvenile probation subjected him to warrantless detention or search, we conclude the detention was unlawful and the fruits of that unlawful detention should have been suppressed. (See *People v. Bates* (2013) 222 Cal.App.4th 60,70 [discovery after the fact of probation search condition will not sanitize an otherwise unlawful detention].)[3]

4. The People have forfeited their inevitable discovery argument by failing to raise it below.

The People argue that even if, when they detained Perez, the officers were unaware that he was on probation and subject to warrantless search and seizure, the subsequently-discovered evidence need not be suppressed because "the officers' actions show that the conditions would have inevitably been discovered." Because the prosecution did not make that argument below, it has been forfeited on appeal. (*People v. Thomas*, *supra*, 29 Cal.App.5th at pp. 1113–1114.) As such, we do not address it.

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[3] The People do not contend the detention was lawful on some other ground.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to vacate its order denying the motion to suppress, enter a new order granting the motion to suppress, and allow Perez to withdraw his no-contest plea.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.